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PRIVATELY- FINANCED INFRASTRUCTURE PROJECTS

Draft chapters of a legislative guide on privately-financed infrastructure projects

Report of the Secretary-General

Addendum

Chapter V. PREPARATORY MEASURES

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A. The project site

1. Acquisition of land for the construction of the facility

1. One of the essential preparatory measures for the execution of an infrastructure project is the acquisition of the land and other property necessary for the construction of the infrastructure facility. Often such land is provided by the host Government, but sometimes it is purchased by the project sponsors. In either case, the legislation of the host country may play an important role in facilitating the acquisition of the required land, thus helping to expedite the implementation of the project.

2. Where a new infrastructure facility is to be built on land owned by the host Government, or an existing infrastructure facility is to be modernized or rehabilitated (such as in "modernize-operate-transfer" or "rehabilitate-operate-transfer" projects), it will normally be for the host Government, as the owner of such land or facility, to make it available to the project company. The host Government may either transfer to the project company title to the land or facilities, or retain title thereto, while granting the project company a right to use the land or facilities and built upon it, a question which is considered below in chapter VI, "The project agreement" [yet to be drafted].

3. A number of countries have extensive provisions on the preservation and protection of State property, including special procedures and authorizations required for transferring the title to such property to private entities or granting to private entities the right to use governmental property. Whatever choice is made by the host Government regarding the ownership of the infrastructure facility to be built, modernized or rehabilitated, it might be desirable for the law to include an authorization to the host Government to transfer or make available to the project company any land or existing infrastructure required for the execution of the project.

4. Both in cases where the infrastructure facility is to be transferred back to the host Government or is permanently owned by the project company, the parties might be interested in establishing the value and the condition of such land and facility at the time it is handed over to the project company. Therefore, in addition to matters which would be typically dealt with in the project agreement (e.g. procedures for handing over the land or facilities, documentation required, stamp duties), it might be useful for the law to require that such land and existing facility be inspected, measured and demarcated prior to being transferred or made available to the project company. An example of a possible provision to that effect, combined with an authorization for the host Government to transfer land to the project company, might be drafted along the following lines:

> 1. The Government is authorized to make available to the concessionaire the land, buildings or other property required for the execution of the project for the duration of the concession period.

2. The project agreement shall provide the procedures for the inspection, demarcation and valuation of such land, buildings or other property and for recording the condition in which they are found prior to being made available to the concessionaire.

5. The situation may become more complex in the case of new infrastructure facilities to be constructed on land that is not already owned by the host Government and that needs to be purchased from its owners. National legislation often provides that the host Government is to acquire the land and make it available for the purposes of the project, although in some cases the necessary land may be purchased by the project sponsors.

6. Acquisition of land by the project company might be used for the development of projects that originate from an unsolicited proposal from the private sector. Particularly in the case of infrastructure facilities of relatively high commercial potential that are not deemed to be a national priority, the host Government might not see a compelling reason for undertaking to acquire the land and make it available to the project company. However, the host Government may still play an important role by assisting the project company to obtain approvals and licences for owning such land, or waiving restrictions or prohibitions, possibly of a legislative nature, that might exist to its ownership by the project company.

7. In most cases, however, the project company will be reluctant to assume the responsibility for purchasing the land needed for the project. The project company may fear the potential delay and expense entailed by having to negotiate with possibly a large number of individual owners and, as necessary in some parts of the world, to undertake complex searches of title deeds and review of chains of previous property transfers so as to establish the regularity of the title of individual owners. Furthermore, publicity concerning the planned infrastructure may raise the price of the land, so that the final sum paid by the project company may exceed its original cost estimate. In the case of projects identified by the host Government, there may also be a national interest in avoiding unnecessary delay or increase in the project cost as a result from the acquisition of land for the construction of the facility.

8. With a view to eliminating the above-mentioned difficulties, the host Government may be willing to assume the responsibility for providing the land required for the implementation of the project, either by purchasing it from its owners, or by acquiring it through expropriation. A number of countries have specific legislation governing expropriation procedures, which might be applicable to expropriation required for privately-financed infrastructure projects. In some countries there may be different types of expropriation procedures depending on their purpose. Although the conditions and procedures for expropriating private property vary greatly in legal systems, the procedure often entails at least two distinct phases.

9. The need for expropriating the property may be established at an initial phase, when the intention of the Government to expropriate the property in question is also made known to the owners or purported owners. In some countries, the host Government may be required to attempt to purchase the property from its owners, prior to resorting to compulsory measures. In other

countries such limitations may not exist. In a number of countries, the Government is required to give notice of its intention to expropriate the property to the owner or to the general public by a special act of the Government, as a necessary condition for proceeding with the expropriation. The act that gives such notice is known under different expressions in different legal systems, such as "condemnation decree", or "declaration of public utility". For convenience purposes, such an act is referred to hereafter as "expropriation decree".

10. The issuance of such an act is often followed by a second phase, during which the compensation due to the owner is estimated and paid. In some countries, the entire expropriation procedures are carried out by the administration, while in other countries the second phase of the expropriation procedures takes the form of a court action. Often the Government will not own the property and will not be authorized to take possession of it unless and until appropriate compensation has been paid to the owners of the property. However, under certain circumstances, such as emergency situations or compelling public need, some laws authorize the court or other authority presiding over the expropriation to authorize the Government to take possession of the property immediately after the opening of the proceedings, often subject to the deposit of a sum commensurate with the value of the property.

11. The right to expropriate private property is usually vested in the Government, but the laws in a number of countries also extend that right to other entities, in addition to the Government. The laws in a number of countries authorize non-governmental entities carrying out certain activities, such as public utility undertakings or concessionaires of public services (e.g. railway companies, electricity authorities, telephone companies), to perform certain actions for the expropriation of private property required for providing or expanding their services to the public. However, some involvement of the Government is still required. For example, the law may provide that the Government has to issue the expropriation decree, while the concessionaire remains responsible for all subsequent steps of the expropriation procedures, including the payment of compensation to the owners.

12. Expropriation procedures are ordinarily lengthy and complex. They may also involve a number of officials at different ministries or levels of Government. Particular delay may be encountered in some countries where the expropriation takes the form of court proceedings. The host Government might thus wish to review existing provisions on expropriation for reasons of public interest with a view to assessing their adequacy to the needs of large infrastructure projects and to determining whether such provisions allow quick and cost-effective procedures, with due consideration to the rights of the owners.

13. In countries where the law contemplates more than one type of expropriation proceedings, it was found desirable to provide that all expropriations required for privately-financed infrastructure projects are to be carried out pursuant to the more expeditious of those proceedings, such as the special proceedings that in some countries apply in emergency situations or for reasons of compelling public need. In some countries it was also found useful to make use of the possibility given by their laws to delegate to the concessionaire the authority to carry the expropriation, while the host Government remained responsible for accomplishing those acts that,

under the relevant legislation, are legal requirements for initiating expropriation proceedings (see above, para. 9). Making use of that possibility might be advantageous for both the host Government and the project company, particularly in those countries where the award of compensation to the owners of the property expropriated is adjudicated in court proceedings, when the parties expect that the concessionaire might be able to handle those proceedings more expeditiously than the host Government. The parties may agree that the entire cost of the expropriation be borne by the project company, or that the host Government will bear some of that cost.

14. Measures such as those mentioned in the preceding paragraph might enable the execution of the project to begin soon after the project award, instead of having to await a final settlement of the question of compensation payable to the owners. For that purpose, in countries where those measures are possible under the relevant legislation, specific laws on privately-financed infrastructure projects might contain only essential provisions and refer to other legislation, as exemplified in the following set of provisions:

> 1. Except as otherwise provided herein, the expropriation of private property required for the construction of an infrastructure facility pursuant to this law shall follow the procedures provided in the [*identify the laws governing expropriation procedures*].
>
> 2. The Government shall be responsible for issuing the [expropriation decree] [and performing other acts that are required under the law for the expropriation of the property].
>
> 3. The Government may authorize the concessionaire to carry out the expropriation, in which case [*option 1*: the concessionaire shall bear all the costs associated with the expropriation procedure] [*option 2*: the project agreement shall establish the respective obligations of the Government and the concessionaire in respect of the costs associated with the expropriation procedure] including the payment of compensation arising out of such expropriation, attorney's fees and judicial costs.
>
> 4. The court or other competent authority may authorize the concessionaire to take possession of the property upon opening of the expropriation proceedings [and deposit of the value of the property].

15. Upon expropriation, title to the land is often vested in the host Government, although in some cases the law may authorize the host Government and the project company to agree on a different arrangement, taking into account their respective shares in the cost of expropriating the property (see chapter VI, "The project agreement" [yet to be drafted]).

2. Right of way and other easements

16. Besides the acquisition of property for the construction of the facility, there might be a need for ensuring the project company's access to such property, in cases where the location of the site of the project is such that access to it requires transit on or through the property of third parties. Such a right of transit is in national laws referred to by expressions such as "right of way". The nature of the project may also be such that it requires the project company to enter property belonging to third parties (e.g. to place fixed installations or cables or to provide services directly to its customers such as in distribution of gas, water, or electricity). Such rights to use another person's property or to do work on it are referred to by expressions such as "easements" or expressions of similar meaning. Hereafter, rights of way, easements and similar rights are generally referred to by the word "easement".

17. Easements usually require the consent of the owner of the property to which they pertain, unless such rights are provided by the law. Generally, there might be three possible ways for the project company to acquire easements: the project company might acquire them directly from the owners of the properties concerned; the host Government might acquire and transfer them to the project company; or the law may grant such rights directly to the project company.

18. The host Government in some cases may prefer to leave it for the project company to negotiate easements with the owners of property. In that case there might be no need for a legislative provision dealing with the matter, and the parties may provide in the project agreement that the project company alone would be responsible for acquiring such rights. The parties might find such a procedure to be feasible for projects where the scope of the easements would be limited to a certain number of previously identified properties adjacent to the project site. However, in other cases such a procedure might not represent an expeditious or cost-effective alternative, particularly where the company would need to acquire easements from multiple owners. Thus, the host Government might prefer to acquire and grant to the project company the necessary easements.

19. In cases where the project site is acquired by the host Government or the project company through expropriation, the question of easements might be dealt with in conjunction with the expropriation of the project site. The scope of the expropriation may thus be defined as covering, in addition to the project site, easements in other lands to the extent necessary for the execution of the project.

20. The precise nature of the easements required by the project company would often depend on the nature of the project. They may include the right to place signs on adjacent lands, in the case of roads or railways; the right to install poles or electric transmission lines above third parties' property in the case of electricity distributors; the right to install and maintain transforming and switching equipment; the right to trim trees that interfere with telephonic lines placed on abutting property. In the light of the diversity of possible easements required in different projects, the host Government may find it preferable not to define in more precise terms the scope of those easements, leaving it to be established for each project individually.

21. A general legislative authorization to establish easements, as required by the project through expropriation, and without limiting their scope, might be contained in a provision similar to the following:

> In addition to the property required for the construction of the facility, the Government [the concessionaire] may establish easements in such other property, as are necessary for ensuring the access of the concessionaire to the facility as well as the erection or placement on or above such other property of such installations and affixtures, and the maintenance thereof, as are required for the functioning of the facility and the delivery of its services.

22. A somewhat different alternative might be for the law itself to provide the type of easements given to the project company, without necessarily requiring the expropriation of the property to which such easements pertain. Such an approach might be used in respect of sector-specific legislation, where the host Government deems it possible to determine, in advance, what easements might be needed by the project company. For instance, a law specific to the power generation sector might grant the following easements:

> The concessionaire shall have a right of cabling for the purpose of placing and operating basic and distribution networks on property belonging to third parties, which shall entitle the concessionaire to the following:
>
> (a) to establish or place underground and overhead cables, as well as establish supporting structures and transforming and switching equipment mounted on them;
>
> (b) to maintain, repair and remove any of the above installations;
>
> (c) to establish a safety zone along underground or overhead cables;
>
> (d) to remove obstacles along the wires or encroaching on the safety zone.

23. However, under some legal systems, the project company might be under an obligation to pay compensation to the owner, as would have been due in the case of expropriation, in the event the nature of the easement is such that the use of the property by its owner is substantially hindered.

B. Establishment of the concessionaire

1. The concessionaire as a consortium

24. National legislation on privately-financed infrastructure projects often contains provisions on the legal status of the concessionaire and deals with the question whether the concessionaire has to be established as an independent legal entity or whether the project may be awarded collectively to the selected project sponsors as project consortium. In a number of countries the law requires that the project company be established as an independent legal entity (see below, subsection 2), while in some countries the law authorizes the award of a project to a consortium formed by the project sponsors.

25. As understood in business practice, a consortium is a contractual arrangement whereby a group of enterprises undertakes to cooperate in carrying out a project without integrating into an independent legal entity. Consortia have been widely used in the construction industry for the development of large, capital-intensive projects requiring technical expertise in different fields. Consortia are commonly regarded as purely contractual arrangements which do not have a juridical personality of their own. However, there is no uniform legal regime governing consortia, which may fall under different contractual categories provided in national laws. Accordingly, the legal status of consortia and the rights and obligations of their members vary in different legal systems.

26. In the case of small-scale or short-term projects involving few sponsors, forming a project consortium may present some advantages, such as more flexibility in dealings among project sponsors and with their business partners than in the case of an incorporated joint venture. Avoiding double taxation may also be a reason for choosing not to establish an independent legal entity in the host country, in case there is no bilateral double taxation agreement between the host country and the country or countries where the foreign investors have their seats. However, for large-scale, long-term projects financed through non-recourse loans, a project consortium would not normally represent a viable alternative. A consortium would not be a suitable vehicle for borrowing funds, since in many jurisdictions the consortium members would have a residual and unlimited liability for the obligations of the consortium. Moreover, a consortium might not have access to the financial market for the purpose of raising funds, where only corporations are authorized by the law to issue negotiable instruments and securities such as stocks, bonds and debentures.

27. Also from the perspective of the host country it would normally be preferable that the project sponsors establish an independent legal entity in the country (see below, subsection 2). However, there might be instances where the host Government would wish to retain the possibility of engaging consortia for infrastructure projects, depending on the scale and nature of the project, or with a view to holding all project sponsors jointly liable for the entire project. For those countries, a decision about the desirable form of arrangement might need to be taken in the light of the characteristics of each particular project or type of infrastructure. For that purpose, the law

might give the procuring entity the option to award the project to a consortium or to require that a separate legal entity be established by the selected group of sponsors, depending on the needs of the project. Should the procuring entity consider that there would be no need for requiring the establishment of the project company as an independent legal entity, the law could address coordination difficulties that might arise in dealing with a consortium and clarify the responsibilities of its members. The law might for instance require that one member of the consortium be designated as responsible for the project vis-à-vis the host Government, while providing that all the remaining members of the consortium remain jointly and severally liable to the host Government for the execution of the project. An example of a provision to that effect might be as follows:

> 1. Where consortia are allowed to submit tenders [proposals], the solicitation of tenders [request for proposals] may provide that the procuring entity has the option to require that, if selected, the consortium must establish an independent legal entity prior to the signature of the project agreement.
>
> 2. If the procuring entity does not require the establishment of an independent legal entity, it shall require the following:
>
> (a) Submission of written proof of the agreement establishing the consortium entered by all its members; and
>
> (b) The appointment of one of its members as the leader of the consortium, who shall be responsible to the Government for the execution of the project.
>
> 3. The appointment of a consortium leader is without prejudice to the joint and several liability of the remaining members of the consortium to the Government for the execution and operation of the project. The project agreement shall be signed by all the members of the consortium.

28. A provision such as the above might help clarify some of the more obvious disadvantages of retaining a consortium for the execution of a project. However, a number of issues would still need to be addressed in the project agreement, and extensive negotiations and detailed provisions might be required to ensure coordination among members of the consortium, adequate liaison with the host Government, as well as clarifying the extent of responsibilities and liabilities of each of the members of the consortium for the execution of the project. 1/

1/ A brief discussion of issues arising out of contracting construction works with a non-integrated group of enterprises is contained in the *Construction Legal Guide* (chapter II "Choice of Contracting Approach", paras. 9-16). Some of the issues mentioned therein might also apply, *mutatis mutandis*, to negotiations concerning privately financed infrastructure projects, including the following: how the difficulty of bringing a claim

2. The concessionaire as an independent legal entity

29. In most cases, the law requires that the concessionaire be an independent legal entity which has to be incorporated prior to, or immediately after, the award of the project. Sometimes the law contains more detailed provisions concerning matters such as minimum capital, corporate form and purpose.

30. A project company established as an independent legal entity in the host country is for a number of reasons the structure normally used for infrastructure projects. It is relatively simple to vest all rights, assets and obligations related to the project in a single independent legal entity. Under such a model, the direct involvement of other parties such as the project sponsors may be limited, and the project company will enter into the project agreement and other instruments in its own name and will have its own personnel and management. An independent legal entity may also provide a mechanism for protecting the interests of the project, which may not necessarily coincide with the individual interests of all of the project sponsors. This aspect may be of particular importance for projects in which significant portions of the required services or supplies are to be provided by project sponsors. Since a substantial part of the liabilities and obligations of the project company, including long-term ones (project agreement, loan and security agreements, construction contracts), are usually agreed upon at an early stage, the project may benefit from being independently represented at the time those instruments are negotiated. Furthermore, a project company established as an independent legal entity allows a clear separation between the assets, proceeds and liabilities of the project and those of the project sponsors, thus facilitating accounting and auditing procedures.

31. One matter often dealt with in legislation on privately-financed infrastructure projects concerns the equity investment required for the establishment of the project company. The host Government has a legitimate interest in seeking an equity level that assures a sound financial basis for the project company and guarantees its capability to meet its obligations. Such interest may be satisfied by requiring that the project company be established with a certain minimum capital. In some countries, that issue is dealt with in the law itself, by prescribing a fixed sum or establishing a percentage of the total project cost as the minimum capital of the project company. In other countries, these issues are not addressed in the legislation and are left for the procuring entity to decide, sometimes after negotiations with the project sponsors.

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against project sponsors from different countries, should a dispute arise, may be overcome; how the dispute-settlement clause may be formulated so as to enable any dispute between the host Government and several or all the members of the consortium to be settled in the same arbitral or judicial proceeding; how guarantees to be given by third parties as security for performance and quality guarantees to be given by members of the consortium are to be structured; what ancillary agreements may have to be entered into by the Government; whether there are any mandatory rules of the applicable law governing an agreement with an unincorporated joint venture.

32. The total investment needed as well as the ideal proportion of debt and equity capital vary from project to project so that it would normally be difficult to establish a fixed sum or percentage that would be adequate for all instances. Thus, a legislative requirement of fixed sum as minimum capital for all companies carrying out infrastructure projects in the country may be excessively rigid. A more flexible approach might be to establish individual requirements taking into account the particular circumstances of each project or type of infrastructure. Where the total expected cost of the project cannot be estimated in advance by the procuring entity, the minimum capital required for the establishment of the project company could be indicated in the solicitation of tenders or request for proposals. Where it is not feasible to estimate in advance the project cost, or in the event the host Government prefers to negotiate the amount or ratio of equity investment offered by the project sponsors, the procuring entity might prefer to have the flexibility to arrive at an adequate minimum capital in the course of the selection process. In countries where the project is awarded by a formal act of the host Government (such as a decree or notice of award (see chapter IV, "Selection of the project sponsors" [yet to be drafted]), the required minimum capital of the project company could then be indicated in such act.

33. In addition to the question of minimum capital, national laws may contain provisions concerning the form under which the project company has to be organized. Some laws specifically require that the project company be incorporated as a certain type of company, while other laws make no provision on this subject. In cases where it is considered important to specify the form in which the project company is to be established, it is desirable to bear in mind the project sponsors' interest in ensuring that their liability will be limited to the amount of their investment. In order to avoid a subsidiary liability for payment of the project company's debts, the project sponsors will normally prefer to establish the project company as a limited liability company, such as a joint stock company. Project sponsors would be reluctant to carry out a project that would require them to assume unlimited liability for the project company's debts.

34. The issues discussed in the preceding paragraphs might be addressed by a provision such as the following:

> 1. The successful tenderer [proposer] shall, within [...] days from the award of the concession, establish the company with which the project agreement will be entered into.
>
> 2. The minimum capital, form, and duration of the project company shall be as provided in the solicitation of tenders [request for proposals] [notice of award of the concession].

35. Some laws contain provisions concerning the scope of activities of the project company, requiring, for instance, that the project company's activities be limited to the development and operation of a particular project. Such restrictions might serve the purpose of ensuring the transparency of the project's accounts and preserving the integrity of the project's assets, by segregating each project's assets, proceeds and liabilities from the assets, proceeds and liabilities of other projects or other activities not related to the project. Also, such a requirement may

facilitate the assessment of the performance of each project since deficits or profits could not be covered with or set off against debts or proceeds from other projects or activities. At the same time, however, the host Government might be interested in reserving the possibility of integrating other projects under a common management, in the event the same project company is awarded a complementary project in a separate selection process. A possible provision establishing such a requirement but allowing for exceptions might be drafted as follows:

> The purpose of the project company shall be limited to the execution and operation of the project for which the concession was awarded. Except as otherwise provided in the solicitation of tenders [request for proposals], a separate company shall be established for carrying out each project.

36. The host Government might also be interested in ensuring that the statutes and by-laws of the project company will adequately reflect the obligations assumed by the company in the project agreement, or that they will not hinder the execution of the project. Therefore, the law may provide that changes in the statutes and by-laws of the project company require prior authorization by the host Government. In requiring governmental approval for modifications of the statutes and by-laws of the project company, it is desirable to weigh the public interests represented through the State against the need for affording the project company the necessary flexibility for the conduct of its business. The daily management of the project might be impaired if even minor questions concerning the company's internal affairs routinely required prior governmental clearance. One possible solution might be to limit the possibility of the host Government objecting to a proposed amendment to those cases that concern provisions deemed to be of essential importance (e.g. amount of capital, classes of shares and their privileges, liquidation procedures) and which could be identified in the project agreement. The following is an example of a provision to that effect:

> The statute and by-laws of the project company and any amendment thereto requires prior approval by the Government, which is deemed granted unless the Government refuses approval within [...] days. The Government may refuse to approve amendments concerning essential provisions of the statute and by-laws [as provided in the project agreement], when such amendments are not deemed to be in the public interest.

37. The host Government may have a legitimate interest in ensuring that the original project sponsors maintain their commitment to the project throughout its duration and that they will not be replaced by entities unknown to the host Government. Thus, the law may provide, in addition to the matters mentioned above, that the transfer of voting shares of the project company shall require the prior approval of the host Government.

C. Approvals and licences

38. In some countries, the entry into force of the project agreement is sometimes subject to the approval of the host Government or an act of parliament, or even the adoption of special

legislation. For certain projects, approvals may be required at different levels of Government. The time required for obtaining such approvals varies greatly from country to country and in some cases may be considerable, particularly when the approving organs or officials were not originally involved in conceiving the project or negotiating its terms.

39. Delays in bringing an infrastructure project into operation may compromise its financial viability or cause considerable loss to its sponsors. Where the additional financial cost cannot be recovered by raising the tariffs or charging higher prices, the project company might turn to the host Government for redress or support. In both situations, the consequence might be an increase in the cost of the project and in its cost to the public. A possible denial of final approval to the project, or of another licence without which the project cannot be carried out, would have even greater consequences for the project sponsors. By the time the project agreement is signed, the project sponsors will normally have spent considerable time and invested significant sums in the project (e.g. preparation of feasibility studies, engineering design and other technical documents; preparation of tendering documents and participation in the tendering proceedings; preparation and negotiations of the contract documents and loan agreements; hiring consultants and advisers).

40. With a view to expediting matters and avoiding the adverse consequences of delays in the project's timetable, in some countries the authority to bind the host Government is delegated in the relevant legislation to designated officials, so that the entry into force of the project agreement occurs upon signature or upon the completion of certain formalities, such as publication in the official gazette. In countries where such a procedure might not be feasible, or in which final approvals by another entity would still be required, it would be desirable to consider ways to avoid such approval requirements functioning as a deterrent for prospective project sponsors accepting to undertake projects in the country. It might be important to bear in mind that the risk of the project being frustrated by lack of approval might be too high for the project sponsors to assume, and that the host Government might be requested to provide sufficient guarantees to the project sponsors and the lenders against such risk. In some countries where those requirements exist, Governments have sometimes agreed in the project agreement to compensate the project sponsors for all costs incurred and to repay any outstanding loans, in the event the final approval of a project is withheld.

41. In addition to approvals required for the entry into force of the project agreement, the development and operation of infrastructure projects usually involve a number of licences or authorizations required under the laws of the host country in respect of various specific activities (such as licences under foreign exchange regulations; licences for the incorporation of the project company; authorizations for the employment of foreigners; registration and stamp duties for the use or ownership of land; importation licences for equipment and supplies; construction licences; licences for the installation of cables or pipelines; licences for bringing the facility into operation). Such licences and authorizations may fall within the competence of various organs at different levels of the national administration and the time required for their issuance may be significant.

42. Some countries have found it helpful to coordinate the issuance of licences at an early stage of the execution of the project by identifying in advance the licences that will be required for

carrying out projects in specific sectors and providing that the procuring entity and the agency or agencies concerned with licensing the activity that is the object of the concession should agree on the terms and conditions for granting such licences before tenders are invited, such as in the following example:

> 1. Prior to issuing the solicitation of tenders [request for proposals], the procuring entity shall, in consultation with other organs and agencies concerned, identify all major licences and the agencies from which licences are to be obtained for setting up the project.
>
> 2. The current list of major licences required and the agencies from whom they are to be obtained shall be provided with the solicitation of tenders [request for proposals].

43. A provision such as the above might be complemented by a provision that entrusts one organ with the authority to monitor the issuance of such licences, as in the following example:

> 1. The [*regulatory body for the sector concerned*] shall be responsible for receiving the applications for licences, transmitting them to the appropriate agencies and monitoring the issuance of all licences listed in the solicitation of tenders and other licences that might be introduced thereafter.
>
> 2. Licences are deemed to be granted unless they are rejected in writing within [...] days of receipt of the application.

44. However, there might be instances where the host Government, for constitutional or other reasons pertaining to its internal organization, might not be in a position to assume responsibility for the issuance of all licences, or to entrust one single body with such a coordinating function. In that case, the host Government might wish to consider providing some assurance that nevertheless it will as much as possible assist the project company in obtaining licences required by national law, such as by designating an official or agency dedicated to provide information and assistance to project sponsors regarding the required licences to be obtained, as well as the relevant procedures and conditions.